

Certificates from purchasers on Certificates of Resale in lieu of resale numbers that describe the drop-shipment situation and the fact that purchasers have no contact with Illinois that would require them to be registered and that they choose not to obtain Illinois resale numbers would constitute evidence that this particular sale is a sale for resale despite the fact that no registration number or resale number is provided. See 86 Ill. Adm. Code 130.225. (This is a GIL).

April 26, 2004

Dear Xxxxx:

This letter is in response to your letter dated January 23, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Your office was contacted in 1990, 1992, 1994, 1996, 1998, 2000 and 2002 to assist ABC in its publication. Forty-five states and the District of Columbia were each asked to respond to the 10 survey questions relating to third-party drop shipment transactions. All jurisdictions responded, and the results were compiled and published in 1990, 1992, 1994, 1996, 1998, 2000 and 2003. Your office was sent a copy of each of the publications. An additional 2002 copy is enclosed for your reference.

We have had continuing favorable reaction to this publication, so much so that ABC is going to completely reprint the survey for 2004 which will be the Seventh Edition. Over 900 copies of the 2002 survey were ordered by the majority of the Fortune 1000 corporations and the reaction to this monographic study has been overwhelmingly favorable with many requests for a complete update that would reflect statute and administrative changes in the various states since the Sixth Edition was released in July 2002.

Therefore, we are contacting all of the 46 taxing jurisdictions that responded in 2002 to the questionnaire that appears on pages ii-iii of the PUBLICATION and are asking each

of them to review their responses related thereto and to respond anew to each of the 10 questions. PLEASE NOTE: Question 7 has been expanded from the 2002 survey; please see the question sheet attached to this letter.

We would be most appreciative if you would take the time to respond to the ten questions and furnish any updated respondent address information that is appropriate (**please include an e-mail address, if you wish**). When all of the states and the District of Columbia have replied, the information will be republished in a new booklet and you will be sent, of course, a copy. Please direct your replies to my attention at the following address where the compilation will take place:

ADDRESS

A reply by you no later than March 31, 2004, would be most gracious on your part given the time schedule we have allowed for information gathering and printing of this new 2004 survey. If you have any questions, do give me a call.

There has been no substantive statutory or administrative rule change with regards to drop shipments that would necessitate a change in the responses given by the Department of Revenue and published in the Sixth Edition of your publication. However, I would like to direct your attention to the enclosed Department regulation entitled "Drop Shipments", found at 86 Ill. Adm. Code 130.225, which explains in greater detail the Department's position on the acceptance of Certificates of Resale by sellers from out-of-State purchasers.

Sellers making sales for resale in Illinois are obligated to obtain valid Certificates of Resale from their purchasers. A valid Certificate of Resale contains all the information required in 86 Ill. Adm. Code 130.1405, a copy of which is enclosed for your reference. Those purchasers having no nexus with Illinois such that they are not registered with Illinois and are not required to collect Use Tax on behalf of their Illinois customers, but needing the ability to provide a valid Certificate of Resale to a seller may obtain a resale number from the Department. So long as purchasers do not act as Illinois retailers and, so long as they do not fall under the definition of a "retailer maintaining a place of business in this State", their sales to Illinois customers are not subject to Illinois Retailers' Occupation Tax liability and they cannot be required to act as Use Tax collectors. Such purchasers would qualify for resale numbers that do not require the filing of tax returns with the Department. See 86 Ill. Adm. Code 130.1415.

It is important to clarify that although such purchasers are not required to collect Use Tax from their Illinois customers, the customers are not relieved of their Illinois Use Tax liability and must self assess and pay over their liability directly to the Department.

Although active registration or resale numbers on Certificates of Resale are still preferred, the Illinois Retailers' Occupation Tax Act does provide that the presumption that a sale is not a resale where there has been a failure to present an active registration number or resale number and a certification to the seller that a sale is for resale may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale. See 35 ILCS 120/2c. In light of this statutory language, certifications from purchasers on Certificates of Resale in lieu of resale numbers that described the drop-shipment situation and the fact that purchasers have no contact with Illinois that would require them to be registered and that they choose not to obtain Illinois resale numbers would constitute evidence that this particular sale is a sale for resale despite the fact that no registration number or resale number is provided. The risk run by companies in accepting such a certification and the risk run by purchasers in providing such a certification is that an Illinois

auditor is much more likely to go behind a Certificate of Resale that does not contain a valid resale number and require that more information be provided by companies as evidence that the particular sale was, in fact, a sale for resale. See 86 Ill. Adm. Code 130.225(d).

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore
Associate Counsel

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